

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
Petitions of the Verizon Telephone)	
Companies for Forbearance Pursuant)	WC Docket No. 06-172
to 47 U.S.C. § 160 in the Providence,)	DA Number 06-2056
Boston, Philadelphia, Virginia Beach,)	
Pittsburgh and New York Metropolitan)	
Statistical Areas)	

**QWEST COMMENTS ON ACN COMMUNICATIONS SERVICES, INC., *ET AL.*,
MOTION TO DISMISS**

Qwest Communications International Inc. (“Qwest”) here comments on the Motion to Dismiss (“Motion”), filed by ACN Communications Services, Inc., and a variety of other competitive local exchange carriers (“CLECs”),¹ that was publicly noticed on October 18, 2006.² The CLEC Parties cite no judicial or regulatory support for their complaint that the Verizon Telephone Companies (“Verizon”) inappropriately culled proprietary information from Verizon’s 911/E911 databases in support of Verizon’s various forbearance petitions. Qwest disagrees with the CLEC parties’ fundamental position and urges the Federal Communications Commission (“Commission”) to demur from ruling on the issue. Alternatively, the Commission should hold that an incumbent local exchange carrier (“ILEC”) does not forfeit its own proprietary rights in 911/E911 information just because the information is also associated with another carrier.³

¹ Motion to Dismiss, filed Oct. 16, 2006, WC Docket No. 06-172 (“Motion”).

² Public Notice, Pleading Cycle Established for Comments on Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order and Motion to Dismiss, DA 06-2056, rel. Oct. 18, 2006, erratum rel. Oct. 25, 2006.

³ CLEC Parties also argue that Verizon violated its Interconnection Agreements with the various parties, arguing that those Agreements prohibit not only access to carrier proprietary information

The concept that information associated with two carriers is “jointly proprietary information” is one previously advanced by Qwest, although not in the context of 911/E911 information.⁴ But the concept is fully applicable in such context. ILECs possess, manage, control and likely often own the 911/E911 information in 911/E911 databases.⁵ While that information might reflect a specific carrier associated with an end user name, address, and telephone number, that fact does not divest the ILEC of any proprietary right or interest in the information.

To the extent Verizon proffered evidence culled from its 911/E911 databases, it has a long line of regulatory precedent supporting such use.⁶ *See* (most recently) the *Omaha Order* proceedings.⁷ *See also* the Competition and Broadband Reporting proceedings,⁸ the Regional

(“CPI”) but use of such information, as well. Motion at 1-2. Qwest takes no position on this argument.

⁴ *See* Comments of U S WEST, Inc., CC Docket No. 96-115, filed Mar. 30, 1998 at 7-10; Reply Comments of U S WEST, CC Docket No. 96-115, filed Apr. 14, 1998 at 7-8.

⁵ The information (the “data”) in a 911/E911 database is likely often owned by a carrier/ILEC, charged with the responsibility of managing the data in connection with associated regulatory and legal obligations. This is so even though there might be a “database administrator” (as that term was used in *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Rcd 19415, 19430-31 ¶29, 19431 n.82, and 19443 n.152 (2005), *appeals pending sub nom.* Nos. 05-1450, *et al.*, *Qwest Corporation v. FCC* (D.C. Cir. pet. for rev. filed Dec. 12, 2005) (“*Omaha Order*”)) who manages the storage of the information in the database, as well as any manipulation or retrievals of information from the database.

⁶ This belies the assertion made by the CLEC Parties that “Verizon is misusing information it obtained *exclusively* by virtue of its position as the ILEC in an effort to demonstrate that it does not have market power as the ILEC.” Motion at 3. Rather, Verizon was using the information it obtained as the likely owner, manager, and operator of the 911/E911 databases.

⁷ *Omaha Order*, 20 FCC Rcd at 19430-31 ¶29, 19431 n.82, and 19443 n.152.

⁸ *See In the Matter of Local Competition and Broadband Reporting*, Notice of Proposed Rulemaking, 14 FCC Rcd 18100, 18123-24 ¶49 (1999) (seeking comment on whether information from 911 databases might “provide [the Commission] with more detailed information about local competition and broadband deployment on a comprehensive basis.”); *In the Matter of Local Competition and Broadband Reporting*, Report and Order, 15 FCC Rcd

Bell Operating Companies (“RBOC”) Section 271 proceedings,⁹ a Section 251 Unbundling proceeding,¹⁰ and a Consent to Transfer Control proceeding.¹¹

7717, 7746¶54 (2000) (outlining an intention to “continue [Commission] efforts to locate and utilize data available from any alternative sources, such as . . . E-911 databases.”).

⁹ For example, see *In the Matter of Application by Qwest Communications International, Inc. for Authorization to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming*, Memorandum Opinion and Order, 17 FCC Rcd 26303, 26318-19¶32 and n.77 (2002) (“*Qwest 9-State Order*”) (noting that one “methodology for estimating a competitive LEC’s facilities-based access lines” involved information retrieved from 911 databases and that such methodology had supported other carrier filings approved by the Commission). *In the Matter of Application by Qwest Communications International Inc. for Authorization to Provide In-Region, InterLATA Services in Arizona*, Memorandum Opinion and Order, 18 FCC Rcd 25504, 25527-28¶42 and n.158 (2003) (rejecting a Sprint challenge to Qwest’s evidence and citing favorably to the *Qwest Minnesota Order*, 18 FCC Rcd 13323, 13356¶61 n.229 (2003) and *Qwest 9-State Order*, 17 FCC Rcd at 26318-19¶32 (approving Qwest’s Track A estimation of lines served using the E-911 database).

¹⁰ *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 18 FCC Rcd 16978, 17091 n.575 (2003) (noting the use of information from E-911 database and noting its limitations), *aff’d in part, remanded in part, vacated in part*, *United States Telecom Ass’n v. FCC*, 359 F.3d 554 (D.C. Cir. 2004).

¹¹ *In re Applications of AMERITECH CORP., Transferor, AND SBC COMMUNICATIONS INC., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14725-26¶23 (1999) (noting that SBC counted the loss to facilities-based competitive LECs “through a variety of means, including . . . 911/E911 databases”).

Accordingly, the Motion to Dismiss sought by the CLEC Parties should be denied. With respect to the broader issue of what information the CLECs should or should not be privy to under the Protective Order, Qwest directs the Commission to the Partial Opposition it filed on this substantive question on October 23, 2006.¹²

Respectfully submitted,

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October 30, 2006

¹² See *In the Matter of Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. Section 160(c) in the Omaha Metropolitan Statistical Area*, Partial Opposition to Motion to Modify Protective Order, WC Docket No. 04-223, filed Oct. 23, 2006.

CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **QWEST**
COMMENTS ON ACN COMMUNICATIONS SERVICES, INC., ET AL.,
MOTION TO DISMISS to be: 1) filed with the FCC via its Electronic Comment Filing
System in WC Docket No. 06-172; 2) served, via e-mail on the FCC's duplicating contractor
Best Copy and Printing, Inc. at fcc@bcpiweb.com; and 3) served, via e-mail on the FCC staff
members as listed below pursuant to Public Notice, DA 06-2056, rel. Oct. 18, 2006.

/s/ Richard Grozier
Richard Grozier

October 30, 2006

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